

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 125 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JUBEDABAI ALLARAKHA

Versus

MOHMED ALLARAKHA

Appearance:

MR JR NANAVATI for Petitioner
MR SB VAKIL for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 10/02/2000

ORAL JUDGEMENT

Rule. Mr.S.B.Vakil waives service.
With the consent of the learned advocates, this
Civil Revision Application is heard today itself.

1. The facts giving rise to this matter are as under:-

The petitioner Jubedabai Allarkha(original plaintiff no.2) and one Khatijabai Allarkha (original plaintiff no.1) filed a suit being Special Civil Suit No. 10 of 1979 in the Court of Civil Judge, Senior Division,Jamnagar against the respondents for taking possession of the suit premises mentioned in Schedule-A attached to the plaint. In the said suit, the petitioner and the said Khatijabai inter alia contended that their father Allarkha Hasanbhai expired on 7th November 1968. He had three sons and five daughters and that their father was doing the business in partnership with his sons during his life time and that their father had made a gift deed in their favour on 20th August 1968. In that gift deed,the suit property is also mentioned.So, the petitioner as well as the said Khatijabai filed a suit for recovery of possession of the suit premises.

During the pendency of the suit,on 22nd October 1979, the said Khatijabai died. So the petitioner gave an application Ex. 94 contending that Khatijabai had the only daughter,namely Parvinabanu Abdul Razak. It was stated that the deceased Khatijabai had made a gift deed of her one half share in the suit property in favour of Parvinabanu on 2nd September 1979. Parvinabanu, by her registered release deed dated 7th November 1989, released the said one half share in favour of the present petitioner. Thus, according to the petitioner, she has become the sole owner of the entire property by virtue of the registered gift deed/release deed. She,therefore, prayed that she is prepared to proceed with the suit as the successor-in-interest of the deceased Khatijabai and the plaint be accrodingly amended. In the alternative, she has prayed to bring Parvinabanu as the legal representative of deceased Khatijabai and to issue notice to her and to pass appropriate orders.

2. The learned trial judge,by his order dated 11.7.1990, rejected the said application Ex. 94 on the ground that in view of number of discripancies found in the gift deed Mark 95/4, it is too early to declare the petitioner as successor-in-title and, therefore, the said request cannot be granted. Regarding the second prayer to join Parvinabanu as a legal representative, the trial court rejected the said prayer on the ground that since Parvinabanu has not applied for her being joined as a party, no relief can be granted.

3. Having heard the learned advocates appearing for

the parties, I am of the opinion that the impugned order passed by the trial court being contrary to the provisions of law is required to be interfered with. There is no dispute to the fact that Parvinabanu is the legal heir and representative of deceased Khatijabai and whether she is interested in the suit or not can be determined provided she is allowed to be joined as a party. Rule 3 of Order XXII deals with the procedure in case of death of one of several plaintiffs or of sole plaintiff and it provides that where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit. Now, it is yet to be decided as to whether the petitioner is a surviving plaintiff and whether she has a right to sue the respondents. In absence of her and the legal representative of the deceased plaintiff no.1, unless and until she succeeds as a successor-in-interest, the presence of heirs and legal representatives of deceased plaintiff no.1 is necessary. In any case, they are the necessary and proper parties. Therefore, the claim of the petitioner being a successor-in-interest depends upon the presence of heir and legal representative of the deceased-plaintiff because he/she can throw light on the genuineness of the case put forward by the petitioner as successor-in-interest. Merely because Parvinabanu who is the heir and legal representative of the deceased plaintiff no. 1 has not made an application for joining party, that fact itself is no ground to reject the application filed by the petitioner for bringing heir and legal representative on record. The words "on an application made in that behalf" occurring in Order XXII Rule 3 make it clear that such an application can be made on behalf of the party. Once the petitioner made such a request before the Court on behalf of her and the legal heir and representative Parvinabanu, the trial court could have granted the same and proceeded with the suit. In any case, by allowing her to join as a party, no prejudice is likely to cause to the respondents as they are already in possession of the properties for which the suit is filed.

4. In this view of the matter, I allow this revision application. The order dated 11th July 1990 passed by the learned 5th Joint Civil Judge, Senior Division, Jamnagar below application Ex.94 is quashed and set aside. The trial court is directed to allow Parvinabanu

to be joined as the legal heir and representative of the plaintiff Khatijabai.

Rule is accordingly made absolute with no order as to costs.

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